

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GRAND CANAL SHOPS II, LLC,

Plaintiff,

v.

RICCARDO IAVARONE,

Defendant.

Case No. 2:12-CV-00213-KJD-RJJ

ORDER

Before the Court is Plaintiff Grand Canal Shops II, LLC's Motion to Amend Complaint (#19). Defendant Riccardo Iavarone has filed an opposition (#22) and Plaintiff filed a reply (#23). Plaintiff also filed a supplement to the Motion to Amend (#25).

Defendant also filed a Motion to Strike Plaintiff's Reply (#24) and a Motion to Strike the Supplement (#28). Plaintiff filed oppositions (## 26, 29) and Defendant filed replies (## 27, 31).

I. Background

Plaintiff is seeking recovery for various causes of action related to alleged mismanagement and unpaid debts of Lanciani of Las Vegas, Inc., d/b/a Lanciani Travel Jewelry. The parties to this action stipulated to August 28, 2012, as the final date to amend pleadings and to add parties. They also stipulated that discovery would conclude on November 28, 2012. On August 28, 2012, Plaintiff filed the Motion to Amend Complaint, which seeks to amend the complaint to add Rita Iavarone,

1 Gianfanco Ivarone, and Modital Bijoux Corp. as parties and to add causes of action for alter ego,
2 civil conspiracy, fraud, fraudulent concealment, and intentional misrepresentation. According to
3 Plaintiff, documents produced during discovery indicate previously unknown involvement by these
4 putative Defendants.

5 Defendant filed an opposition to the Motion to Amend, arguing that Plaintiff's Proposed
6 Amended Complaint failed to meet the pleading standards of Federal Rule of Civil Procedure 9(b).
7 In reply, Plaintiff stated that the claims in the Proposed Amended Complaint were sufficiently pled
8 and were supported by documents and other evidence produced during discovery. Plaintiff
9 referenced these documents for the first time in the Reply and did not attach them to any pleadings.
10 Plaintiff also argued that there was "unity of interest among the Corporate Group," an entity not
11 identified in either the Proposed Amended Complaint or the Motion to Amend. Finally, Plaintiff
12 asked for opportunity to amend, should the Court conclude that the Proposed Amended Complaint
13 was defective. Defendant moved to strike the Reply on the grounds that it contained argument
14 beyond the scope of the original motion and Proposed Amended Complaint.

15 Shortly thereafter, Plaintiff filed a "Supplement to Motion to Amend" consisting only of
16 Plaintiff's Initial Expert Disclosure, which was apparently completed after the Motion to Amend had
17 been filed. Defendant moved to strike the supplement as improper. Plaintiff, without citing any
18 authority giving it a right to supplement its Motion to Amend, argued that "report supports the facts
19 set forth in Plaintiff's Motion to Amend."

20 II. Discussion

21 A. Standard for Leave to Amend

22 "After a party has amended a pleading once as a matter of course, it may only amend further
23 after obtaining leave of the court, or by consent of the adverse party." Fed. R. Civ. P. 15(a). Rule
24 15(a)(2) provides that courts "should freely give leave [to amend] when justice so requires." Fed. R.
25 Civ. P. 15(a)(2). Under this standard, there is a general "policy to permit amendment with 'extreme
26 liberality.'" Chodos v. West Publ'g Co., 292 F.3d 992, 1003 (9th Cir. 2002) (quoting Morongo Band

1 of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990)). This “extreme liberality” is
 2 tempered, however, by other considerations. Thus, “[w]hen considering a motion for leave to
 3 amend, a district court must consider whether the proposed amendment results from undue delay, is
 4 made in bad faith, will cause prejudice to the opposing party, or is a dilatory tactic.” Id. (citing
 5 Foman v. Davis, 371 U.S. 178, 182 (1962)); see also Forsyth v. Humana, Inc., 114 F.3d 1467, 1482
 6 (9th Cir. 1997).

7 The reviewing court should also consider the futility of the proposed amendment. See
 8 Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (citing Foman, 371
 9 U.S. at 182). Where there is undue prejudice to the opposing party, see Eminence, 316 F.3d at 1052,
 10 or futility of amendment, see Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir. 1995), such factors can,
 11 by themselves, “justify the denial of a motion for leave to amend,” Id. Additionally, where there is
 12 “a strong showing of any of the remaining . . . factors,” denial of a motion for leave to amend is also
 13 justified. Eminence, 316 F.3d at 1052.

14 B. Sufficiency of Proposed Amended Complaint

15 Because the Motion for Leave to Amend was filed within the time frame to which the parties
 16 stipulated, there is no allegation that Plaintiff seeks amendment for a prejudicial or improper
 17 purpose. Sufficiency is the only grounds on which Defendant challenges amendment.

18 Rule 9(b) states that a party asserting a claim for fraud or mistake “must state with
 19 particularity the circumstances constituting fraud.” Fed. R. Civ. P. 9(b). This heightened
 20 requirement may be met by making allegations “specific enough to give defendants notice of the
 21 particular misconduct which is alleged to constitute the fraud charged so that they can defend against
 22 the charge and not just deny that they have done anything wrong.” Bly-Magee v. California, 236
 23 F.3d 1014, 1018 (9th Cir. 2001) (quoting Neubronner v. Milken, 6 F.3d 666, 672 (9th Cir. 1993)).
 24 Such allegations must “state the time, place, and specific content of the [fraud] as well as the
 25 identities of the parties to the [fraud].” Schreiber Distrib. Co. v. Serve-Well Furniture Co., 806 F.2d
 26 1393, 1401 (9th Cir. 1986). Rule 9(b)’s requirements apply to claims that, although lacking fraud as

1 an element-are, grounded or sound in fraud. See Vess v. Ciba-Geigy Corp., 317 F.3d 1097, 1103-04
2 (9th Cir.2003) (where plaintiff alleges a unified course of fraudulent conduct, claims may sound in
3 fraud and pleading of that claim as a whole must satisfy the particularly requirement of Rule 9(b)).

4 The causes of action as set forth Plaintiff's Proposed Amended Complaint for alter ego, civil
5 conspiracy, fraud, fraudulent concealment, and intentional misrepresentation are based on allegations
6 that the putative Defendants acted together to engage in a part of a unified course of fraudulent
7 conduct. Specifically, Plaintiff alleges that recognition of "Lanciani as a separate entity and insulate
8 the Defendants from liability would in effect sanction injustice and operate as a fraud against
9 Plaintiff." (Proposed Amended Complaint ¶ 20.) This allegation is incorporated into each cause of
10 action. Accordingly, each of Plaintiff's claims must be pled with particularly.

11 The proposed Amended Complaint lacks the particularity required by Rule 9(b). Specifically,
12 the claims in the Proposed Amended Complaint fail to set forth facts showing the time, manner, and
13 place of alleged fraudulent statements. It does not identify the putative Defendants' roles in the
14 alleged fraudulent conduct, or the specific nature of the alleged misconduct itself. Instead, the
15 allegations are general, conclusory, and lacking in detail which would put each putative Defendant
16 on notice of what he did wrong. Accordingly, the Motion to Amend is denied.

17 C. Motions to Strike

18 Defendant's arguments that the Reply and Supplement filed by Plaintiff were inappropriate
19 are well founded. However, the Reply and Supplement were filed in support of the Motion to
20 Amend. Since the Court has denied the Motion to Amend and determined that the Proposed
21 Amended Complaint was insufficient, the Motions to Strike are moot.

22 D. Leave to Amend

23 Plaintiff has requested the opportunity to cure the defects in the Proposed Amended
24 Complaint. It appears from the pleadings that Plaintiff believes that it is now in possession of
25 documentary and expert evidence which support its claims. Given the liberal pleading standard of
26 Rule 15, the Court will permit Plaintiff to file a final motion for leave to amend, together with

1 another proposed amended complaint. Plaintiff is advised that the proposed amended complaint, as
2 well as all future filings in this action, must comply in every respect with the Federal Rules of Civil
3 Procedure. Plaintiff is required to file any motion for leave to amend within 14 days from the date of
4 this order.

5 III. Conclusion

6 **IT IS HEREBY ORDERED** that Plaintiff Grand Canal Shops II, LLC's Motion to Amend
7 Complaint (#19) is **DENIED**.

8 **IT IS FURTHER ORDERED** that Defendant's Motion to Strike Plaintiff's Reply (#24) and
9 a Motion to Strike the Supplement (#28) are **MOOT**.

10 **IT IS FURTHER ORDERED** that Plaintiff may file a motion for leave to amend, together
11 with a proposed amended complaint which complies in every respect with the Federal Rules of Civil
12 Procedure, within 14 days from the date of this order.

13 DATED this 4th day of December 2012.

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Kent J. Dawson
United States District Judge